

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ADAM MICEK,

Defendant.

* * * * *

Case No. 19-CR-139(RJD)

Brooklyn, New York

February 20, 2020

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

VIRGINIA NGUYEN, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

MITCHELL C. ELMAN, ESQ.
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1 (Proceedings commenced at 2:42 p.m.)

2 THE CLERK: Criminal cause for a guilty plea,
3 docket no. 19-CR-139, United States of America vs. Micek.

4 Counsel, please state your appearances for the
5 record.

6 MS. NGUYEN: Good afternoon. On behalf of the
7 United States, Virginia Nguyen.

8 MR. ELMAN: For Adam Micek, Mitchell Elman, E-L-M-
9 A-N. Good afternoon, Your Honor.

10 THE CLERK: The Honorable Lois Bloom presiding.

11 THE COURT: Good afternoon, Mr. Micek.

12 THE DEFENDANT: Good afternoon.

13 THE COURT: Mr. Micek, as you may know, this case
14 has been assigned to the Honorable Raymond J. Dearie, and he
15 as the judge will make the ultimate decision as to whether to
16 accept your guilty plea.

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And if he does, he will be the judge
19 who sentences you. You have the absolute right to have Judge
20 Dearie listen to your plea without any prejudice to you.

21 Do you understand?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: I have before me a form which reflects
24 that you've consented to have me hear your plea. I'm going
25 to pass it to my law clerk and ask her to show it to you.

1 Mr. Micek, is this your signature on the consent
2 form?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And do you understand the form?

5 THE DEFENDANT: Yes.

6 THE COURT: And did you consult with your attorney
7 before signing it?

8 THE DEFENDANT: I have.

9 THE COURT: The mics are strong. It will be just
10 fine. He doesn't have to bend over.

11 Mr. Micek, do you give your consent voluntarily and
12 of your own free will to have me hear your plea here today?

13 THE DEFENDANT: I do.

14 THE COURT: And have any threats or promises been
15 made to you to induce you to agree to have me hear your plea
16 today?

17 THE DEFENDANT: No.

18 THE COURT: So, again, I'm going to sign the
19 consent form, which I know Ms. Nguyen and Mr. Elman have
20 already signed, and it is dated today, February 20th of 2020.

21 Mr. Micek, your attorney advises me that you wish
22 to plead guilty to count 4 of the indictment which charges
23 you with conspiracy to commit wire fraud in violation of 18
24 United States Code Section 1349. Since I must be certain
25 that you understand your rights and the consequences of your

1 plea, I will explain certain matters to you and ask you
2 questions.

3 If I say anything that you do not understand please
4 say so and I will repeat the question. Is that clear?

5 THE DEFENDANT: Yes.

6 THE COURT: Will the clerk please swear the
7 defendant.

8 THE CLERK: Mr. Micek, please raise your right
9 hand.

10 (The defendant is sworn.) THE COURT: Mr.
11 Micek, you have just taken an oath to tell the truth. Do you
12 understand that if you answer any of my questions falsely
13 your answers may later be used against you in another
14 criminal prosecution for perjury or for making a false
15 statement?

16 THE DEFENDANT: Yes.

17 THE COURT: What is your full name, sir?

18 THE DEFENDANT: Adam Micek.

19 THE COURT: And how old are you?

20 THE DEFENDANT: 27.

21 THE COURT: And what schooling or education have
22 you had, Mr. Micek?

23 THE DEFENDANT: My highest education was high
24 school.

25 THE COURT: And did you graduate from high school?

1 THE DEFENDANT: Yes, I have.

2 THE COURT: And have you had any difficulty in
3 communicating with your attorney?

4 THE DEFENDANT: No.

5 THE COURT: And are you presently or have you
6 recently been under the care of a doctor or a psychiatrist?

7 THE DEFENDANT: No.

8 THE COURT: Have you ever been hospitalized or
9 treated for any mental illness?

10 THE DEFENDANT: No.

11 THE COURT: Have you ever been hospitalized or
12 treated for an addiction to drugs, alcohol or any other
13 substance?

14 THE DEFENDANT: No.

15 THE COURT: In the past 24 hours, Mr. Micek, have
16 you taken any pills, medicine or drugs of any kind?

17 THE DEFENDANT: No.

18 THE COURT: Have you taken any alcohol in the past
19 24 hours?

20 THE DEFENDANT: No.

21 THE COURT: Is your mind clear as you stand before
22 the Court today?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand the nature of these
25 proceedings today?

1 THE DEFENDANT: Yes.

2 THE COURT: Mr. Elman, have you discussed the
3 question of a guilty plea with your client?

4 MR. ELMAN: Yes, Your Honor.

5 THE COURT: In your view, does he understand the
6 rights he would be waiving by pleading guilty?

7 MR. ELMAN: He does.

8 THE COURT: And is he capable of understanding the
9 nature of these proceedings today?

10 MR. ELMAN: Yes, he is.

11 THE COURT: Do you have any doubts about his
12 competency to proceed today?

13 MR. ELMAN: No, Your Honor.

14 THE COURT: Have you advised Mr. Micek of the
15 penalties that can be imposed and discussed the applicable
16 sentencing considerations including the sentencing
17 guidelines?

18 MR. ELMAN: Yes, Your Honor.

19 THE COURT: And, Mr. Micek, have you had the
20 opportunity to discuss your case with your attorney?

21 THE DEFENDANT: I have.

22 THE COURT: And are you satisfied with the
23 assistance your attorney has given you thus far in this
24 matter?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Micek, have you received a copy of
2 the indictment?

3 THE DEFENDANT: I have.

4 THE COURT: And have you consulted with your
5 attorney about the charge in the indictment that you will be
6 pleading guilty to?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand the charge against
9 you?

10 THE DEFENDANT: Yes.

11 THE COURT: The first and most important thing you
12 must understand is that you have a right to plead not guilty
13 to this charge and to persist in that plea. Under the
14 constitution and laws of the United States you would then
15 have a right to a speedy and public trial before a jury with
16 the assistance of your attorney.

17 Do you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: You are presumed to be innocent and you
20 would not have to prove that you were innocent. At trial the
21 burden is on the government to prove beyond a reasonable
22 doubt that you are guilty of the crimes charged.

23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: I have been told that you will be

1 pleading guilty to count 4 of the indictment which charges
2 you with conspiracy to commit wire fraud.

3 In order to prove that you are guilty of conspiracy
4 to commit wire fraud, the government must establish beyond a
5 reasonable doubt that you, together with at least one other
6 person, entered into an agreement to commit wire fraud, that
7 you knowingly and wilfully became a member of the conspiracy,
8 that there was a scheme or artifice to defraud or to obtain
9 money or property by false and fraudulent pretenses,
10 representations or promises, that you knowingly and wilfully
11 participated in the scheme or artifice to defraud with
12 knowledge of its fraudulent nature and with specific intent
13 to defraud, and in execution of that scheme that you used or
14 caused the use of interstate wires.

15 If the government fails to present sufficient
16 evidence to prove the elements of the crime, the jury would
17 have the duty to find you not guilty.

18 Do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: In the course of a trial witnesses for
21 the government would have to come to court and testify in
22 your presence. Your lawyer would have the right to cross-
23 examine these witnesses, to object to the evidence offered by
24 the government, and to offer evidence in your behalf. You
25 would also have the right to compel the attendance of

1 witnesses at trial.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Although you have the right to testify
5 at a trial, you cannot be compelled to testify and
6 incriminate yourself. If you decided not to testify the
7 Court would instruct the jury that they could not hold that
8 against you.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: If you plead guilty I will ask you
12 questions about what you did in order to satisfy myself that
13 you are guilty of the charge to which you seek to plead
14 guilty and you will have to answer my questions and
15 acknowledge your guilt. Thus, you will be giving up the
16 right that I have just described, that is, the right not to
17 say anything that would show that you are guilty of the crime
18 with which you are charged.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: If you plead guilty and the Court
22 accepts your guilty plea you will be giving up your right to
23 a trial and all the other rights I have just discussed, there
24 will be no trial and the Court will simply enter a judgment
25 of guilty based on your plea.

1 Do you understand?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Micek, are you willing to give up
4 your right to a trial and the other rights I have just
5 discussed with you?

6 THE DEFENDANT: I am.

7 THE COURT: Ms. Nguyen, is there an agreement
8 pursuant to which this plea is being offered?

9 MS. NGUYEN: Yes, Your Honor. There's a written
10 plea agreement that I understand has been marked as exhibit
11 1.

12 THE COURT: So I am again going to pass this
13 forward. And I want you to look at every page, Mr. Micek.
14 And then I'm going to ask you whether or not it is your
15 signature on page 10. But make sure with your attorney that
16 this is what you've reviewed.

17 THE DEFENDANT: Yes, ma'am.

18 (Pause.)

19 MR. ELMAN: Your Honor, I have reviewed the plea
20 agreement with Mr. Micek.

21 THE COURT: And, Mr. Micek, is that your signature
22 on page 10 of the agreement?

23 THE DEFENDANT: That is my signature, ma'am.

24 THE COURT: Okay. Can you please pass it back up.
25 Thank you.

1 I'm going to summarize. I'm not going to read the
2 ten pages, but I'm going to summarize.

3 You are pleading guilty to count 4 of the
4 indictment charging you with the violation of Title 18,
5 United States Code, Section 1349. In exchange the government
6 agrees that no further criminal charges will be brought
7 against you for conspiracy to commit wire fraud, as charged
8 in the indictment, from April 2016 to July 2018.

9 If you plead guilty today the government will move
10 the Court for an additional one level reduction. The
11 government has also agreed that at the time of sentence it
12 will move to dismiss the remaining counts of the indictment
13 against you with prejudice.

14 The U.S. Attorney's Office will take no position
15 concerning where within the guideline range determined by the
16 Court the sentence should fall and will make no motion for an
17 upward departure under the sentencing guidelines.

18 You have agreed not to file an appeal or otherwise
19 challenge the conviction or sentence in the event the Court
20 imposes a term of imprisonment of 46 months or below.

21 Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: If you violate any provision of this
24 agreement you will not be released from your plea of guilty,
25 but the U.S. Attorney's Office will be released from its

1 obligations under this agreement.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Does the written agreement that I've
5 just summarized accurately reflect your understanding of the
6 agreement that you've entered into with the government?

7 THE DEFENDANT: Yes, it does.

8 THE COURT: Other than the promises contained in
9 the written agreement, has anyone made any other promises to
10 you that have caused you to plead guilty here today?

11 THE DEFENDANT: No.

12 THE COURT: Has anyone made any promises to you as
13 to what your sentence will be?

14 THE DEFENDANT: No.

15 THE COURT: Mr. Micek, let me discuss the
16 consequences of your pleading guilty here today.

17 As I said, you are pleading guilty to count 4 of
18 the indictment. The offense that you are pleading guilty to
19 provides for a minimum term of imprisonment of zero years and
20 a maximum term of 20 years imprisonment.

21 Also, there is a maximum supervised release term of
22 three years to follow any term of imprisonment. There is
23 also a maximum fine of \$250,000 or twice the gross gain or
24 twice the gross loss.

25 Restitution is mandatory in the amount of

1 \$132,787.50 to be paid in accordance with the restitution
2 order to be filed under seal with the Court in connection
3 with the plea. There is a special assessment of \$100 which
4 must be paid to the clerk of court at or before sentencing.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Micek, if you are not a citizen of
8 the United States you are subject to removal from this
9 country. Removal and other immigration consequences are the
10 subject of a separate proceeding.

11 However, you must affirm that you want to plead
12 guilty regardless of any immigration consequences that your
13 plea may entail.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Micek, do you affirm that you want
17 to plead guilty regardless of any immigration consequences
18 that your plea may entail if you are not a citizen of the
19 United States?

20 THE DEFENDANT: I do.

21 THE COURT: In your plea agreement you also
22 acknowledge that you obtained and/or acquired property that
23 is subject to forfeiture as a result of your violation of 18
24 United States Code, Section 1349 as alleged in the
25 indictment. You consent to the entry of a forfeiture money

1 judgment in the amount of \$114,271. The forfeiture money
2 judgment shall be paid in full 30 days in advance of the
3 sentencing.

4 If you fail to pay any portion of the forfeiture
5 money judgment by the due date, you consent to the forfeiture
6 of any other property of yours up to the amount of the unpaid
7 forfeiture money judgment.

8 You agree to fully assist the government in
9 effectuating the payment of the forfeiture money judgment and
10 you agree to disclose all of your assets to the United
11 States.

12 You also knowingly and voluntarily waive your right
13 to any required notice concerning the forfeiture.

14 Do you understand all of those conditions that I
15 have just read into the record regarding the forfeiture?

16 THE DEFENDANT: Yes.

17 THE COURT: In determining what sentence to impose,
18 Judge Dearie will consider the guidelines issued by the
19 United States Sentencing Commission and the other factors
20 specified by Section 3553(a) of Title 18 to determine whether
21 to impose a sentence within that range.

22 These other factors considered include the nature
23 and circumstances of the crimes committed, your
24 characteristics and history, and the public interest in the
25 sentence.

1 Prior to sentencing, the Court will receive a pre-
2 sentence report containing information about these factors
3 and the guidelines. You and your lawyer will have the
4 opportunity to see that report and to speak on your behalf at
5 sentencing.

6 Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you and your attorney talked about
9 how the Sentencing Commission guidelines might apply to your
10 case?

11 THE DEFENDANT: Yes.

12 THE COURT: Although the guidelines are advisory,
13 has the government an estimate of what the sentencing
14 guideline range is likely to be?

15 MS. NGUYEN: Yes, Your Honor. With the acceptance
16 of responsibility, the government estimates that the
17 guidelines range will be 21 to 27 months.

18 THE COURT: And is that your estimate as well, Mr.
19 Elman?

20 MR. ELMAN: Yes, Your Honor.

21 THE COURT: Keep in mind, Mr. Micek, that these are
22 just estimates and they could be wrong. Judge Dearie will
23 calculate the guideline range and determine whether to follow
24 or depart from the applicable guideline range.

25 Do you understand that any estimate is not binding

1 and could be rejected by the Court?

2 THE DEFENDANT: Yes.

3 THE COURT: If your sentence is higher than you
4 expected it to be, you will not be able to withdraw your
5 guilty plea.

6 Is that clear?

7 THE DEFENDANT: Yes.

8 THE COURT: In addition to imprisonment, you may be
9 sentenced to supervised release.

10 Supervised release means that after you are
11 released from prison your activities will be supervised by
12 the Probation Department and there may be many restrictions
13 placed on your liberty, such as travel limitations,
14 requirements that you report regularly to a probation
15 officer, prohibitions on carrying guns and other limitations.

16 Do you understand the nature of supervised release?

17 THE DEFENDANT: Yes.

18 THE COURT: As I detailed in reviewing the
19 consequences of your plea, the statute you are accused of
20 violating involves a term of supervised release with the
21 maximum term being three years on supervised release.

22 If you violate the conditions of the release, you
23 can be returned to prison for up to two years without credit
24 for pre-release imprisonment or time previously served on
25 post-release supervision.

1 So if you don't follow the conditions of supervised
2 release, your prison term could be lengthened.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: If after you are sentenced you or your
6 attorney think that the Court has not properly followed the
7 law in sentencing you, you can appeal your sentence to a
8 higher court.

9 However, you have agreed not to file an appeal or
10 otherwise challenge the conviction or sentence in the event
11 that the Court imposes a term of imprisonment at or below 46
12 months.

13 Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: By pleading guilty, Mr. Micek, you will
16 not, except under very limited and rare circumstances, be
17 able to challenge your judgment of conviction.

18 Do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. Micek, do you have any questions
21 you would like to ask me about the charge, your rights or
22 anything else relating to this matter?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Is everything clear to you, sir?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Elman, do you know of any reason
2 why your client should not enter a plea of guilty to the
3 charge?

4 MR. ELMAN: No, Your Honor.

5 THE COURT: Are you aware of any viable, legal
6 defense to the charge?

7 MR. ELMAN: No, Your Honor.

8 THE COURT: Mr. Micek, are you prepared to plead?

9 THE DEFENDANT: Yes.

10 THE COURT: Adam Micek, how do you plead to count 4
11 of the indictment, guilty or not guilty?

12 THE DEFENDANT: Guilty, Your Honor.

13 THE COURT: Are you making this plea of guilty
14 voluntarily and of your own free will?

15 THE DEFENDANT: Yes.

16 THE COURT: Has anyone threatened or forced you to
17 plead guilty?

18 THE DEFENDANT: No.

19 THE COURT: Has anyone made you any promise that
20 has caused you to plead guilty?

21 THE DEFENDANT: No.

22 THE COURT: Has anyone made you any promise about
23 the sentence you will receive?

24 THE DEFENDANT: No.

25 THE COURT: Mr. Micek, can you please describe

1 briefly in your own words what you did in connection with the
2 crime charged in count 4 of the indictment.

3 THE DEFENDANT: In the Eastern District of New
4 York, I committed conspiracy to commit wire fraud and wire
5 fraud.

6 THE COURT: Okay. Give me in straight talk, where
7 were you when this happened?

8 THE DEFENDANT: Well, Your Honor, it's Queens, New
9 York.

10 THE COURT: Was it Queens, New York?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And can you give me the dates that this
13 --

14 THE DEFENDANT: I don't have exact dates. I can
15 give you the years. It's between --

16 THE COURT: Okay. The years is fine.

17 THE DEFENDANT: -- 2016-2017.

18 THE COURT: Okay. And did you do this with
19 somebody else?

20 THE DEFENDANT: Yes. One other person.

21 THE COURT: Okay. And do you want to ask some
22 questions, Ms. Nguyen?

23 MS. NGUYEN: May I see that?

24 The other person that you acted with, did you agree
25 with him to engage in this activity?

1 THE DEFENDANT: No. I wasn't aware of the
2 situation.

3 MS. NGUYEN: Did you enter into an agreement, not
4 necessarily in writing, but did you agree with another person
5 to what you were doing?

6 THE DEFENDANT: Yes.

7 MS. NGUYEN: And did you --

8 The government is satisfied with the allocution.

9 THE COURT: Okay. I want to make sure that I heard
10 him say what he said. He read two lines into the record.

11 I had him elaborate on where it happened because he
12 said Eastern District of New York, and most people don't know
13 what that means, so I wanted to makes sure it was within the
14 Easter District. He said it happened in Queens. He said the
15 years it happened. He said he did agree with somebody else.
16 And the last sentence that he read was that he agreed to
17 commit wire fraud -- conspired to commit wire fraud.

18 You're satisfied he doesn't need anything else?

19 MS. NGUYEN: Well, let me ask.

20 Did you knowingly become a member of this
21 conspiracy to commit wire fraud?

22 THE DEFENDANT: Knowingly? No.

23 MS. NGUYEN: Well --

24 THE DEFENDANT: I want to say yes. Let's just
25 leave it at yes.

1 THE COURT: Well, now, I want you to speak to your
2 attorney and I want this to be clear on the record. I
3 understand that he doesn't want to say more than he needs to
4 say, but I also want to make sure that the record is clear
5 for Judge Dearie.

6 MS. NGUYEN: Yes, Your Honor.

7 THE DEFENDANT: Your Honor --

8 MR. ELMAN: If you could ask the question again.

9 MS. NGUYEN: The question is did you knowingly and
10 wilfully become a member of the conspiracy to commit wire
11 fraud?

12 THE DEFENDANT: I have. Yes.

13 THE COURT: If the government's satisfied, then
14 I'll accept the allocution. If you believe you need more,
15 then ask your questions, Ms. Nguyen.

16 MS. NGUYEN: In light of what has happened, I would
17 just like to ask a factual question.

18 Did you agree to sell e-vouchers online as part of
19 this conspiracy?

20 THE DEFENDANT: Yes.

21 MS. NGUYEN: The government is satisfied with the
22 allocution.

23 THE COURT: Okay. Thank you.

24 Anything further that you need to put on the
25 record, Mr. Elman?

1 MR. ELMAN: No, Your Honor.

2 THE COURT: So based on the information given to
3 me, I find that Mr. Micek is competent, that he is acting
4 voluntarily, that he fully understands the charge, his rights
5 and the consequences of his plea, and that there is a factual
6 basis for the plea.

7 I therefore recommend to Judge Dearie that he
8 should accept Mr. Micek's plea of guilty to count 4 of the
9 indictment. And Judge Dearie has set sentencing in this
10 matter on May 8th, 2020 at 10 a.m.

11 Was there any other matter that needed to be
12 addressed on behalf of the United States today?

13 MS. NGUYEN: No, Your Honor.

14 THE COURT: I just want to state that Mr. Micek is
15 here on conditions that have previously been set and those
16 conditions will remain in place.

17 Anything further that needs to be addressed on
18 behalf of Mr. Micek today?

19 MR. ELMAN: Nothing further, Your Honor.

20 THE COURT: Then this matter is adjourned. Good
21 luck.

22 THE DEFENDANT: Thank you, Your Honor.

23 MS. NGUYEN: Thank you, Judge.

24 MR. ELMAN: Thank you for allowing it.

25 THE COURT: No problem.

1 (Proceedings adjourned at 3:07 p.m.)

2 I, CHRISTINE FIORE, court-approved transcriber and
3 certified electronic reporter and transcriber, certify that
4 the foregoing is a correct transcript from the official
5 electronic sound recording of the proceedings in the above-
6 entitled matter.

7
8 

9 November 6, 2020

10 Christine Fiore, CERT

11 Transcriber
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